

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KELLY SHEPPARD)	
Claimant)	
VS.)	
)	
ROLLING HILLS HEALTH CENTER)	Docket No. 268,886
Respondent)	
AND)	
)	
KANSAS HEALTH CARE ASSOCIATION)	
Insurance Trust)	

ORDER

Respondent and its insurance trust appealed the October 30, 2001 Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

In the October 30, 2001 preliminary hearing Order, Judge Avery granted claimant's request for both medical and temporary total disability benefits after finding that claimant sustained a cumulative trauma injury to his back while working for respondent through August 13, 2001.

Respondent and its insurance trust contend Judge Avery erred. They argue claimant failed to prove that he timely notified respondent of the accidental injury. In support of that argument, respondent and its insurance trust contend the appropriate date of accident is May 10, 2001, and that claimant failed to notify respondent until more than 75 days following that date. Accordingly, respondent and its insurance trust request the Board to reverse the preliminary hearing Order and deny claimant's request for benefits.

Conversely, claimant argues the preliminary hearing Order should be affirmed. Although claimant filed his Application for Hearing with the Division of Workers Compensation alleging an accidental injury occurring on or about May 10, 2001, claimant now contends the Judge correctly ruled that he sustained a series of accidents through August 13, 2001, the date that claimant last worked for respondent. Claimant argues he provided timely notice to respondent on May 25, 2001.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of his accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes that the preliminary hearing Order should be affirmed.

In February 2000, claimant began working for respondent as its dietary manager. In early May 2001 claimant began having staffing problems and worked 24 consecutive days filling in for employees. During that period, claimant worked 12- to 13-hour shifts on seven or eight of those days. While filling in for his staff, claimant performed more physically demanding activities than his supervisory position normally required as he cooked, washed dishes, and put away stock, along with performing his regular duties.

On approximately May 10, 2001, claimant began noticing pain and symptoms in the back of his left leg. After that date, claimant's symptoms gradually increased.

According to claimant, around May 25 or 26, 2001, he discussed his back with one of his supervisors, Larry Birmingham, and told his supervisor about aggravating his back working the long shifts. Claimant testified, in part:

. . . After I'd finished with three straight weeks of working and stuff because it had to be done, I was limping and slumped over very bad or hunched over real badly. So I talked with my administrator. He asked me what kind of things I was going to do to correct it and asked me how I'd hurt it and things of that nature.¹

. . . Late May was the first time [of discussing the back problem with his supervisor] because I'd gone into his office to discuss some other matters with him and I was limping really bad and hunched over. And he asked me what was wrong and I told him that I'd exacerbated an old injury working all the hours.²

Mr. Birmingham did not testify. Accordingly, claimant's testimony about his conversation with Mr. Birmingham and relating his back symptoms to his work is uncontradicted.

¹ October 22, 2001 preliminary hearing transcript, page 21.

² October 22, 2001 preliminary hearing transcript, page 42.

At this juncture of the claim, claimant has established that he provided timely notice of his accidental injury to respondent. Claimant filled in for employees for at least 24 consecutive days in May 2001, performing physical activities requiring him to repetitively lift and twist. The notice provided to respondent around May 25 or 26, 2001, was well within 10 days of the last date that claimant performed that injury-producing work.³

Accordingly, claimant has established that he provided respondent with timely notice of the accidental injury whether claimant's date of accident is the last date that he filled in for employees in late May 2001 or whether his work activities caused additional cumulative injury through his last day of work on August 13, 2001, as determined by the Judge.

WHEREFORE, the Board affirms the October 30, 2001 Order for Compensation entered by Judge Brad E. Avery.

IT IS SO ORDERED.

Dated this ____ day of December 2001.

BOARD MEMBER

c: Jack M. N. Shelton, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Trust
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

³ See K.S.A. 44-520.